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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CHAD E. WINER et al., Plaintiffs and Appellants, v. FAMILY INVESTMENT COMPANY, INC., Defendant and Respondent.	G042009 (Super. Ct. No. 07CC12697) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Daniel J. Didier, Judge. Affirmed.

Rosner & Mansfield, Rosner, Barry & Babbitt and Hallen D. Rosner for Plaintiffs and Appellants.

Baker & Associates, Mark K. Baker and Dean A. Reeves for Defendant and Respondent.

* * *

The court conducted a successful settlement conference in litigation between car buyers and a car dealership. The settlement agreement did not include a determination of prevailing party status for either attorney fees or costs. Rather, the parties agreed that the judge who had conducted the settlement conference would determine those issues following briefing and a hearing on the matter. The court determined that there was no prevailing party for the purposes of attorney fees, but awarded the buyers their costs.

The buyers appeal on several grounds. First, they contend that if they were the prevailing parties for the purposes of costs, then they were the prevailing parties for the purposes of attorney fees. Second, the buyers argue the court impermissibly considered confidential settlement information in reaching its conclusion that there was no prevailing party for the purposes of attorney fees. Third, they assert the court erred in considering a statutory defense the car dealership had raised. Finally, the buyers say the court erred in failing to rule on certain evidentiary objections. The buyers have not demonstrated abuse of discretion or reversible error. We affirm.

I

FACTS

Chad E. Winer and Nicole M. Franklin, husband and wife (Winers), filed suit against Family Investment Company, Inc., doing business as Family Honda (Family Honda), asserting causes of action for violation of the Consumers Legal Remedies Act (Civ. Code, § 1750 et seq.) (CLRA), unfair business practices (Bus. & Prof. Code, § 17200 et seq.), negligent misrepresentation, and intentional misrepresentation.[1] The

[1] The first amended complaint was filed on behalf of the Winers by the law firm of Rosner & Mansfield. As recently as July 15, 2009, Rosner & Mansfield was utilizing letterhead identifying the law firm by the name "AUTO FRAUD LEGAL CENTER." Rosner & Mansfield subsequently changed its firm name to Rosner, Barry & Babbitt, LLP. The law firm represents that it took the Winers' case on a contingency fee basis.

Winers alleged that they sought to purchase a white 2007 Odyssey Touring vehicle with navigation and rear entertainment systems. Family Honda had a white 2007 Odyssey Touring vehicle in stock, but it did not have a factory installed navigation system. They further alleged that the Family Honda salesperson assured them that Family Honda could install a navigation system that was identical to a factory installed system. Based on that representation, the Winers decided to purchase the vehicle, for $36,548, and they also decided to purchase a Bluetooth system. Both systems were installed after the purchase was completed. According to the Winers, the navigation system that was installed was materially different from the factory installed version and neither it nor the Bluetooth system operated properly. Purportedly, Family Honda refused to trade the vehicle for one with a factory installed navigation system.

At the date set for trial, a settlement conference was held at the instance of the court. The parties settled the case. They agreed that the Winers would transfer to Family Honda their white 2007 Odyssey Touring vehicle plus $3,780 in exchange for a black 2009 Odyssey Touring vehicle with a factory installed navigation system. The settlement was placed on the record orally in open court. The court set a date for hearing motions for attorney fees and costs.

The Winers filed a motion in which they sought attorney fees in the amount of $158,872 and costs of $6,474, for a total amount of $165,346. Family Honda filed both an opposition to the Winers' motion and an attorney fees request of its own. Family Honda sought $60,093.15 in attorney fees. The court declined to award attorney fees, finding "[t]here [was] no prevailing party for purposes of an attorney fee award." However, it awarded costs in the amount of $6,474 to the Winers. The Winers appeal.

II

DISCUSSION

A. Standard of Review:

"We review an order granting or denying fees for an abuse of discretion. [Citation.] 'Because the "experienced trial judge is the best judge of the value of professional services rendered in his court," we will not disturb the trial court's decision unless convinced that it is clearly wrong, meaning that it is an abuse of discretion. [Citations.] However, "'[t]he scope of discretion always resides in the particular law being applied, i.e., in the "legal principles governing the subject of [the] action. . . ." Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an "abuse" of discretion.'" [Citations.] When the record is unclear whether the trial court's award of attorney fees is consistent with the applicable legal principles, we may reverse the award and remand the case to the trial court for further consideration and amplification of its reasoning.' [Citation.] [¶] While entitlement and amount of an attorney fee award is reviewed for abuse of discretion, the legal question of the interpretation of 'prevailing party' under the CLRA or ASFA is a question of statutory construction that we review independently. [Citations.]" (*Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 148-149 (*Graciano*).)

B. Costs Gets You Fees?

In their motion, the Winers cited three statutory bases for their claim to attorney fees. They argued that the CLRA, the Automobile Sales Finance Act (Civ. Code, § 2981 et seq.) (ASFA), and Civil Code section 1717, pertaining to actions on contract, each entitled them to attorney fees. On appeal, the Winers emphasize that the CLRA and the ASFA each provide that attorney fees *shall* be awarded to the prevailing

party.[2] They contend the court found them to be the prevailing parties and that, therefore, it erred in failing to award them attorney fees under those statutes.

More specifically, the Winers say the court found that they were the prevailing parties under the standard enunciated in *Graciano, supra,* 144 Cal.App.4th 140, and awarded them costs under that standard, but erroneously failed to award them attorney fees under that same standard. They hang their hat on a portion of the reporter's transcript wherein their attorney read the following snippet from *Graciano, supra,* 144 Cal.App.4th 140, at page 153: "'"[P]laintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on *any significant issue* in litigation which achieves *some of the benefit* the parties sought . . . ."' [Citations.]" The court replied: "Well, I think that's for [the Code of Civil Procedure section] 1032 analysis, . . . but I don't know about the prevailing party as far as the other statutes."

The Winers take the court's remark to mean that it found them to be prevailing parties under *Graciano, supra,* 144 Cal.App.4th 140, but nonetheless only awarded them costs. They read too much into that one remark, made early during the hearing. On page 18 of the reporter's transcript, the court summed up: "And there is discretion with the court with regard to awarding these fees, both under the statutes and under [Code of Civil Procedure section] 1032, and it is a unique situation. And I think when you balance what—costs are awarded under [section] 1032, but not under the statute." More importantly, the judgment states: "1. There is no prevailing party for purposes of an attorney fee award. Each side to bear their own fees. [¶] [2.] Plaintiffs have and will recover from Defendant Family [Honda] costs in the amount of $6,474.00."

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[2] "The attorney fee provision of the CLRA, section 1780, subdivision (d) provides: 'The court shall award court costs and attorney's fees to a prevailing plaintiff in a litigation filed pursuant to this section. . . .' The attorney fee provision of the ASFA, section 2983.4 provides: 'Reasonable attorney's fees and costs shall be awarded to the prevailing party in an action on a contract or purchase order subject to the provisions of this chapter . . . .'" (*Graciano, supra,* 144 Cal.App.4th at p. 149.)

This language makes clear that, contrary to the Winers' characterization of the record, the court ultimately found there was no prevailing party with respect to attorney fees.

The Winers also point out that some courts, such as *Kim v. Euromotors West/The Auto Gallery* (2007) 149 Cal.App.4th 170 (*Kim*), have applied the standards for determining prevailing party status under Code of Civil Procedure section 1032 to the determination of prevailing party status under the CLRA. They urge this court to do the same.

The court in *Kim, supra,* 149 Cal.App.4th 170 correctly observed that "[t]he CLRA does not define 'prevailing plaintiff.'" (*Id.* at p. 179.) It then observed that different courts had applied different standards to determine whether a party was a prevailing party within the meaning of the CLRA. (*Ibid.*) The *Kim* court stated: "In *Reveles* [*v. Toyota by the Bay* (1997)] 57 Cal.App.4th 1139, the court applied the general definition of 'prevailing party' found in Code of Civil Procedure section 1032.[3] It concluded that a plaintiff is the prevailing party under section 1780(d) 'if he obtained a "net monetary recovery" on his [CLRA] claim.' [Citation.] More recently, the court in *Graciano, supra,* 144 Cal.App.4th at page 150, held that, in deciding the prevailing party status under the CLRA, 'the court should adopt a pragmatic approach, determining prevailing party status based on which party succeeded on a practical level. [Citations.] Under that approach, the court exercises its discretion to determine "the prevailing party

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[3] "For purposes of an award of costs pursuant to Code of Civil Procedure, section 1021, section 1032, subdivision (a)(4) defines 'prevailing party' as 'the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs between the parties on the same or adverse sides pursuant to rules adopted under Section 1034.'" (*Kim, supra,* 149 Cal.App.4th at p. 179, fn. 5.)

by analyzing which party realized its litigation objectives." [Citation.]'" (*Kim, supra,* 149 Cal.App.4th at p. 179.) The *Kim* court chose to apply concepts from each approach, with an emphasis on Code of Civil Procedure section 1032 by analogy. (*Id.* at p. 181.)

We do not find the approach that uses the Code of Civil Procedure section 1032 definition of "prevailing party" as the definition of "prevailing party" in the CLRA context to be compelling. As authority for that approach, *Kim, supra,* 149 Cal.App.4th 170, at page 179, cited *Reveles v. Toyota by the Bay* (1997) 57 Cal.App.4th 1139 (disapproved on other grounds in *Gavaldon v. DaimlerChrysler Corp.* (2004) 32 Cal.4th 1246, 1261, *Snukal v. Flightways Manufacturing, Inc.* (2000) 23 Cal.4th 754, 775-776, fn. 6). *Reveles* employed that approach without analysis, citing *Adler v. Vaicius* (1993) 21 Cal.App.4th 1770 in support of its decision. (*Reveles v. Toyota by the Bay, supra,* 57 Cal.App.4th at p. 1154.) *Adler*, which was not a CLRA case at all, simply stated: "Since [Code of Civil Procedure] section 527.6 does not define 'prevailing party,' the general definition of 'prevailing party' in [Code of Civil Procedure] section 1032 may be used. [Citation.]" (*Adler v. Vaicius, supra*, 21 Cal.App.4th at p. 1777.) Notice the permissive. When the statutory scheme in question does not provide a definition of "prevailing party," some courts may choose to apply the definition of "prevailing party" as contained in Code of Civil Procedure section 1032. But other courts may choose not to.

Graciano, supra, 144 Cal.App.4th 140, for example, stated: "Neither the CLRA nor the ASFA defines the term 'prevailing party.' Accordingly, in deciding prevailing party status under those statutes, the court should adopt a pragmatic approach, determining prevailing party status based on which party succeeded on a practical level. [Citations.]" (*Id.* at p. 150.) The *Graciano* court cited a string of cases in support of that approach. (*Ibid.*) As one of those cases, *Galan v. Wolfriver Holding Corp.* (2000) 80 Cal.App.4th 1124, aptly stated: "We reject [the appellant's] attempt to import the definition of 'prevailing party' under Code of Civil Procedure section 1032 into Civil

Code section 1942.4. Pursuant to section 1032, a prevailing party is entitled to recover costs in an action or proceeding. (§ 1032, subd. (b).) However, in defining the term 'prevailing party,' section 1032 begins with the phrase '[a]s used in this section[.]' (§ 1032, subd. (a).) Thus, section 1032 does not purport to define the term 'prevailing party' for all purposes." (*Galan v. Wolfriver Holding Corp., supra,* 80 Cal.App.4th at p. 1128.) We agree.

More to the point, to the extent the Winers argue that if a court determines a party is a prevailing party for the purposes of Code of Civil Procedure section 1032, and therefore awards costs to that party, it must also find that party to be the prevailing party for the purposes of an entitlement to attorney fees under an unrelated set of statutes, the law is to the contrary. "[T]he premise . . . that a [party] who prevails under the cost statute is necessarily the prevailing party for purposes of attorney fees, has been uniformly rejected by the courts of this state. [Citation.]" (*Heather Farms Homeowners Assn. v. Robinson* (1994) 21 Cal.App.4th 1568, 1572; accord, *Graciano, supra,* 144 Cal.App.4th at p. 153; *Galan v. Wolfriver Holding Corp., supra,* 80 Cal.App.4th at pp. 1128-1129; *McLarand, Vasquez & Partners, Inc. v. Downey Savings & Loan Assn.* (1991) 231 Cal.App.3d 1450, 1456.) In short, an award of costs does not necessarily get you an award of attorney fees. The Winers have not demonstrated that just because the court awarded them costs it erred in failing to award them fees as well.

C. Prohibited Use of Confidential Information:

(1) Introduction—

The Winers maintain that the court, when determining prevailing party status for the purposes of an award of attorney fees, erred in considering the confidential settlement discussions over which it presided. In support of their position, they cite Evidence Code section 1119, *Travelers Casualty & Surety Co. v. Superior Court* (2005)

126 Cal.App.4th 1131 (*Travelers*), and *Foxgate Homeowners' Assn. v. Bramalea California, Inc.* (2001) 26 Cal.4th 1 (*Foxgate*).

Travelers, supra, 126 Cal.App.4th 1131 made clear that voluntary settlement conferences are a type of mediation to which the statutes embodied in Evidence Code section 1115 et seq. apply. (*Travelers, supra,* 126 Cal.App.4th at pp. 1138-1139.) One such statute, Evidence Code section 1119, provides in pertinent part that, with certain exceptions: "(a) No evidence of anything said . . . in the course of . . . a mediation . . . is admissible . . . . [¶] . . . [¶] (c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation . . . shall remain confidential." Another such statute, Evidence Code section 1121, as quoted by the *Travelers* court, states that "'a court . . . may not consider, any report, assessment, evaluation, . . . or finding of any kind by the mediator concerning a mediation conducted by the mediator, other than a report that is mandated by court rule or other law and that states only whether an agreement was reached, unless all parties to the mediation expressly agree otherwise . . . .' (§ 1121)." (*Travelers, supra,* 126 Cal.App.4th at p. 1145.) Those two statutes were at issue in *Foxgate, supra,* 26 Cal.4th 1. The appellate court in that case held that the trial court had violated both section 1119 and section 1121 in considering the report of a mediator about the behavior of certain persons at mediation and deciding to impose sanctions against those persons on account of such behavior. (*Foxgate, supra,* 26 Cal.4th at pp. 5-8, 17-18.)

According to the Winers, the record reflects that the court violated these evidentiary principles by considering confidential matters disclosed only during the settlement conference. We turn to the record to assess their argument.

(2) Settlement Agreement—

The December 3, 2008 settlement agreement, reached with the assistance of the court, was placed on the record orally. It provided that the Winers would transfer

their 2007 Odyssey Touring vehicle plus $3,780 to Family Honda in exchange for a 2009 Odyssey Touring vehicle with a factory installed navigation system. The court noted that the parties had been willing to exchange for a 2008 Odyssey Touring vehicle, but none was available, so they agreed upon a 2009 Odyssey Touring vehicle together with cash. The court stated: "Both sides have compromised and have come up with that extra amount of money to make the transaction completed." In addition, the parties agreed that the Winers would receive a new extended warranty and would cash in their existing extended warranty, with the cash being applied for the benefit of Family Honda. The settlement agreement specified that the 2009 Odyssey Touring vehicle would be black with a tan or ivory interior. Also, the Winers' existing loan was to be transferred to the new vehicle.

On a final point, the parties agreed that the issue of attorney fees would be briefed and submitted to the court. The court framed the issues as the availability of attorney fees, the possibility of an attorney fees award to Family Honda, the amount of attorney fees, and an award of costs. It set a briefing schedule and also set a hearing in the same department for February 6, 2009. The court agreed to make a tentative ruling available before the scheduled hearing.

(3) Tentative ruling—

The court's tentative ruling stated in part: "As with any extended settlement negotiations, both sides settled for less than could have been achieved at trial, and reached a good-faith settlement. [The Winers] did receive [a] newer vehicle in exchange for [the] alleged non-conforming vehicle. [The Winers] compromised on color and gave money in exchange for [a] newer vehicle. [Family Honda] alleged that the [Winers'] vehicle was conforming with the sales contract and also alleged [their] failure to comply with CLRA notice requirements [Civ. Code, § 1782]. [Citation.] Nevertheless, both sides were willing to settle the lawsuit by exchange of vehicles to

avoid trial and further costs of litigation. Both sides compromised and settled the merits of the case. Court finds "give and take" in settlement of this case with mixed results to both parties and, in the exercise of its discretion, determines there is no prevailing party for purposes of an attorney fee award . . . . [Citations.]"

(4) Hearing on attorney fees motion—

At the February 6, 2009 hearing, the Winers asserted, as they continue to do on appeal, that the court violated laws prohibiting the use of confidential information obtained during the settlement negotiation. They argued that the court, in issuing its tentative ruling, had erred in considering settlement discussions that were not reflected in either the reporter's transcript or any other portion of the record. The Winers stated, for example, that the court had considered issues pertaining to the color of the car, which, they asserted, had been addressed only in the settlement discussions. The court acknowledged having conducted the settlement, but stated that "the court can consider the pleadings that are part of the record."

The Winers argued that they had not obtained a mixed result through the settlement, but rather that they had fully obtained their litigation objectives. The court replied: "Well, counsel, you were here. The court was here. Both sides were here. All the parties were here. This settlement discussion took, if I recall, more than one day total. There certainly was give and take. The other side didn't want to pay a penny. [¶] . . . [¶] You knew . . . the terms of this settlement. I knew the terms of this settlement. You both agreed to have this court determine this fee motion, which the court has." He further stated: "I don't think that there was anything stated here or considered . . . that [was] the result of any confidence or anything said in the midst of the settlement conferences. Everything is . . . on the public record here that the court considered, whether it is in the pleadings or on the settlement record itself that was stated here in open court."

To that, the Winers responded: "The transcript never says . . . one word about a dispute over color, but the court made one of its rulings based on the issue of color, you know, and that is not in the transcript anywhere." The court said: "[G]ranted, with the issue of color, it certainly wasn't something that was . . . a secret. Okay? Maybe it is not stated on the black and white record in this case. I haven't combed the settlement transcript that was stated, but . . . the color issue was waived and that was something that was insisted upon." He later stated: "The court did not consider any confidential settlement discussions. They are not part of the tentative. Possibly the color of the car."

In making their argument that the court violated the applicable evidentiary principles, the Winers emphasize the fact that it considered the issue of the color of the car, the fact that the parties engaged in "give and take" and compromised in reaching a settlement, the fact that the settlement talks lasted more than a day, and the notion that Family Honda "didn't want to pay a penny." However, as we shall show, the court was correct in its observation that the matters it considered were indeed reflected in the public record.

(5) Other matters of record—

(a) pertaining to color

The first amended complaint stated that Family Honda had two 2007 Odyssey Touring vehicles in stock, a white one and a slate green one. Although the white one did not have a factory installed navigation system, the Winers nonetheless wanted the white one, so they chose to purchase it even though the navigation system had to be installed afterwards. This is an indication that the white color was important. Indeed, in a pre-lawsuit letter the Winers demanded "that Family Honda provide us with the vehicle we purchased. This is a 2007 Honda Odyssey Touring [vehicle] in the *same color* with factory installed navigation." (Italics added.) The Winers reminded the court

of this demand later on, in their reply memorandum in support of their motion for attorney fees and costs.

The color of the vehicle the Winers ultimately accepted was a sufficiently important settlement term to be nailed down on the record when the settlement agreement was recited. The vehicle they accepted pursuant to the settlement agreement was black.

Although, during the February 6, 2009 hearing, the court at one point indicated some uncertainty as to whether the issue of color was a matter of public record, it also remarked that it had not "combed the settlement transcript" in search of the point, and also stated that the issue of color was not a secret. Having had the opportunity to comb the record ourselves, it is clear that the issue of color was a matter of record and that the court, in reflecting on that issue, did not impermissibly consider a confidential matter.

(b) relating to compromise

In the first amended complaint the Winers also alleged that, on a date at least 45 days after the purchase, Family Honda informed them that it was willing to return the vehicle to its original state as of the time of purchase. However, Family Honda was not willing to trade the vehicle for one with a factory installed navigation system, because there were then too many miles on the vehicle for an exchange. As Nicole Franklin stated more particularly in her October 14, 2008 deposition, Family Honda offered to pay them $1,500 in addition to returning the vehicle to its original condition. Apparently, this offer was rejected, inasmuch as litigation ensued. In their prayer for relief as contained in their first amended complaint, the Winers sought: (1) "declaratory, equitable, and/or injunctive relief" under the CLRA; (2) general, special and actual damages; (3) "rescission and/or restitution of all monies"; (4) incidental and consequential damages; (5) "punitive and/or statutory damages"; (6) prejudgment interest; (7) attorney fees and costs; and (8) other relief as the court deemed just.

In their settlement demand made in advance of an October 17, 2008 mandatory settlement conference held before a judge other than the one whose ruling is at issue here, the Winers demanded: (1) rescission of the sales contract, with return of the vehicle by the Winers; (2) payoff of the outstanding loan balance on the vehicle loan; (3) payment to the Winers of $30,000; and (4) payment of attorney fees and costs. Family Honda made the following counteroffer in response: (1) the Winers' 2007 Odyssey Touring vehicle would be exchanged for a new 2008 Odyssey Touring vehicle with a factory installed navigation system; (2) the current loan balance would remain the same; and (3) Family Honda would pay $3,000 in attorney fees; and (4) each party would bear his own costs.[4]

As the foregoing shows, the Winers sought far more by their first amended complaint than they received in settlement. They sought, inter alia, rescission, restitution, damages including punitive damages, prejudgment interest, attorney fees and costs, as well as injunctive relief under the CLRA. Even were we to characterize the settlement as one with a monetary value in their favor, the Winers certainly did not receive punitive damages, prejudgment interest, attorney fees or costs, or injunctive relief as part of the settlement. Obviously, the Winers did not receive everything they sought in their first amended complaint.

The Winers also did not receive everything they sought in their October 2008 pretrial settlement demand. There, they sought return of the vehicle and payoff of the outstanding loan balance, plus payment to them of $30,000 and an amount equal to

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[4] Evidence Code section 1117, subdivision (b)(2) provides that the confidentiality statutes at issue herein do not apply to settlement conferences held pursuant to California Rules of Court, rule 3.1380. That rule pertains to mandatory settlement conferences. The record indicates that the October 17, 2008 proceeding was a mandatory settlement conference. Therefore, Evidence Code section 1115 et seq. is inapplicable to documents filed in connection with that proceeding. The parties neither mention Evidence Code section 1117 nor make any argument that the settlement conference held on December 3, 2008 was also a mandatory settlement conference.

their attorney fees and costs. The ultimate settlement terms were closer to those set forth in Family Honda's counteroffer, in which Family Honda offered to exchange of the Winers' vehicle for a new 2008 Odyssey Touring vehicle and pay them $3,000 in attorney fees.

In short, the public record in this matter shows that the Winers neither achieved all their litigation objectives as stated in their first amended complaint nor received all they sought in their October 2008 settlement demand. In other words, the public record shows that, as the court stated, the parties compromised, that is, engaged in "give and take."[5] The court did not abuse its discretion in concluding there was no prevailing party for the purposes of an attorney fees award.

D. Consideration of Family Honda's CLRA Arguments:

In its motion in limine No. 6, filed November 19, 2008, Family Honda sought to have the court exclude any of the Winers' evidence to show that they had complied with the notice requirements of the CLRA, as contained in Civil Code section 1782.[6] In her declaration in support of the motion in limine, Catherine Adams, counsel for Family Honda, hammered on the issue of the Winers' purported noncompliance with the CLRA notice requirements.

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[5] As an aside, we note the reporter's transcript shows that the parties agreed that the judge who had presided over the successful settlement conference would determine the matter of fees. We need not address whether they thereby expressly agreed, within the meaning of Evidence Code section 1121, that that judge could consider confidential matters he learned during the settlement conference, inasmuch as it is not apparent that he did so.

[6] Civil Code section 1782, subdivision (a) requires that, at least 30 days before commencing an action for damages under the CLRA, the consumer shall notify the prospective defendant of the alleged CLRA violations and demand certain remedial measures. Subdivision (a) provides that "[t]he notice shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the place where the transaction occurred or to the person's principal place of business within California."

The record on appeal does not contain copies of the parties' trial briefs, filed in advance of the December 3, 2008 settlement conference. However, in their opposition to the Winers' attorney fees motion, Family Honda asserted that the CLRA cause of action was the only one which could possibly have given rise to an award of attorney fees. But because the Winers allegedly had failed to comply with the CLRA notice requirements, they could not have prevailed on that cause of action at trial and thus could not have recovered attorney fees. In their reply memorandum in support of their motion for attorney fees, the Winers offered a lengthy argument in dispute of Family Honda's position on the CLRA issue.

In the tentative ruling on the competing attorney fees motions, the court noted that each side had "compromised" and had "settled for less than could have been achieved at trial . . . ." In describing arguments that could have been raised at trial, the court noted inter alia that Family Honda had alleged the Winers had failed to comply with the CLRA notice requirements contained in Civil Code section 1782.

At the February 6, 2009 hearing on the attorney fees motions, the Winers argued that the court had erred in considering the CLRA issue. The court stated: "I don't think there's any dispute that the CLRA notice was a hotly contested issue that was certainly many times stated both on and off the record as—fatal to the [Winers'] claim." It also acknowledged that it had considered the issue.

On appeal, the Winers maintain that the court erred in considering the CLRA issue and in reaching the merits. They cite three cases in support of their argument—*Engle v. Copenbarger & Copenbarger, LLP* (2007) 157 Cal.App.4th 165 (*Engle*), *Middleton v. State Bar* (1990) 51 Cal.3d 548 (*Middleton*), and *Evans v. Department of Motor Vehicles* (1994) 21 Cal.App.4th 958 (*Evans*). None of these cases supports their position.

In *Engle, supra,* 157 Cal.App.4th 165, the plaintiff in a sexual harassment lawsuit accepted the defendants' Code of Civil Procedure section 998 offer to compromise, which made no specific mention of attorney fees. Judgment was entered accordingly. The trial court rejected the plaintiff's postjudgment motion, in which she argued that she was entitled to attorney fees under Government Code section 12965 inasmuch as she was the prevailing party on a discrimination claim. (*Id.* at pp.167-168.) This court reversed, first holding that the case fell "squarely within the rule that a party who secures a recovery by accepting a section 998 offer is entitled to costs and fees unless they are excluded by the offer." (*Id.* at p. 169.) Since the plaintiff had accepted a section 998 offer that did not address fees, she was entitled to them. (*Id.* at p. 171.) The defendants argued on appeal that the plaintiff's statutory discrimination claims were barred by the statute of limitations. (*Id.* at p. 170.) This court stated: "But the time to raise a statute of limitations defense was prior to settlement, not after. Having elected to settle, [the defendants] cannot now complain that most of the claims against it were time-barred." (*Ibid.*)

Curiously, the Winers contend that *Engle, supra,* 157 Cal.App.4th 165 is directly on point. We disagree. First, where the plaintiff in *Engle* had accepted a Code of Civil Procedure section 998 offer that did not address attorney fees, here, there was no section 998 offer and the settlement agreement specifically reserved the issue of attorney fees, to be determined by the court on subsequent motions of the parties. So, *Engle* does not stand for the proposition that the Winers were necessarily entitled to an award of attorney fees. Second, where the defendants in *Engle* apparently did not raise the statute of limitations issue until after the parties had settled the case, here Family Honda clearly raised the CLRA issue before the parties settled. *Engle* is inapposite and does not control the matter before us.

To the extent *Engle, supra*, 157 Cal.App.4th 165 has any relevance, it goes to the matter of whether the court could consider the CLRA issue at all. Turning to a different point, the Winers cite *Middleton, supra*, 51 Cal.3d 548 and *Evans, supra*, 21 Cal.App.4th 958, neither of which addressed the CLRA, to show they would have won on the merits of the CLRA issue. However, it is completely unnecessary to decide which party would have prevailed on the merits of the CLRA issue, since the court made no determination on that point. It merely observed that Family Honda had raised the issue—the implication being that Family Honda was compromising by foregoing the resolution of its CLRA argument. The Winers have not persuaded us either that the court erred in considering the fact that there was a hotly contested issue over compliance with CLRA notice requirements or that it abused its discretion in determining there was no prevailing party for the purposes of attorney fees.

E. Failure to Rule on Evidentiary Objections:

As noted previously, Attorney Catherine Adams filed a declaration, dated November 18, 2008, in support of Family Honda's motion in limine No. 6. Well over a month after the December 3, 2008 settlement, the Winers filed objections to Adams's declaration and a request to strike portions of Family Honda's brief in opposition to the Winers' motion for attorney fees. Apparently, the court did not rule on the objections and motion to strike.

The Winers contend the court erred in failing to rule. The entirety of the Winers' argument, as contained in their opening brief on appeal, reads as follows: "THE COURT'S REFUSAL TO RULE ON PLAINTIFFS' EVIDENTIARY OBJECTIONS WAS ERROR[.] [¶] If the Court had looked at the subject evidentiary objection (AA pp. 281-285), it would have known that settlement talks were not relevant in deciding fees and inadmissible. The Court also would have known Defendant had no admissible facts

to support its CLRA defense. Plaintiffs had the right, and the Court the obligation, to rule on the objections."

The Winers cite no legal authority to show that the ruling on attorney fees should be reversed because of the failure to rule on the Winers' evidentiary objections. In ruling on the attorney fees motions, the court neither weighed the evidence nor made any evidentiary findings with respect to the CLRA issue. It only found that each party had engaged in give and take and it observed that one of the arguments that Family Honda had relinquished in deciding to settle was its argument on the CLRA issue. Having failed to cite any legal authority to show that the court committed reversible error under the circumstances, the Winers have waived their argument on the point. (*Roden v. AmerisourceBergen Corp.* (2007) 155 Cal.App.4th 1548, 1575-1576.)

III

DISPOSITION

The judgment is affirmed. Family Honda shall recover its costs on appeal.

MOORE, J.

WE CONCUR:

O'LEARY, ACTING P. J.

IKOLA, J.